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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,581	03/17/2004	Erwin Coenraad Murk	903-101	3875
23869	7590	03/27/2006		
HOFFMANN & BARON, LLP 6900 JERICO TURNPIKE SYOSSET, NY 11791			EXAMINER DIXON, MERRICK L	
			ART UNIT	PAPER NUMBER
			1774	
DATE MAILED: 03/27/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

CM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/802,581	MURK, ERWIN COENRAAD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Merrick Dixon	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**MERRICK DIXON**  
**PRIMARY EXAMINER**

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Bonin(US 4831062) in view of European Patent(EP 1001000A1).

The primary reference to von Bonin teaches the basic claimed product including an article of fiber-reinforced fire product comprising a matrix of plasticizer, sawdust, fillers and glass fibers including layers made therefrom- col 1, lines 5-14; col 3, 52- col 4, line 7. Although the primary reference teaches the numerous and included material for its fire protection article as claimed, it appears silent to the aspect of including aluminous cement in its matrix. The secondary reference to the European Patent, however, teaches that it is known in the art to include such claimed aluminous cement material in fire protective articles as taught by the primary reference. It would have been obvious to one of ordinary skill in the art the time the invention is made to combine the teachings of the secondary reference and include such cement material as taught by the secondary reference in von Bonin, in the absence of unexpected results and to further impart desired demands and properties to the same- page 3, lines 10-15. concerning claims 3 and 5, the primary reference teaches the claimed filler material and includes sawdust- col 3, lines 51- col 4, line 4. Concerning claims 2 and 4, the reference teaches the claimed plasticizer in col 4, lines 14-34. Concerning claims 8 and 9, both reference panel building articles- see primary reference, col 5, lines 40-53.; see European patent ,

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page 3, lines 12-15. Concerning claim 7, the primary reference teaches the fibers in a parallel-like manner- col 5, lines 50-53. See secondary reference, also.

3. Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent( EP 1001000 A1).

The cited reference teaches the claimed process including mixing several material together and casting and drying same to form the fire retardant product- page 2, lines 50-58; page 4, lines 36-38; page 3, lines 2-22. Concerning claims 11-15, it is submitted the type and/or amounts of material used during the process is of no patentable consequences to the instant question for patentability which must be manipulatively distinct. However, it is submitted it would have been obvious in the cited reference to employ such material. It is submitted , however, the reference teaches these material- see reference. Concerning claim 16, the reference teaches multilayering steps on page 4, lines 37-41. It is submitted it would have been obvious to the skilled artisan to apply such layers in desired order. This amounts to rearranging such layers- In re Japikse, 86 USPQ 70.

4. Applicant's arguments filed 12-29-05 have been fully considered but they are not persuasive. Applicants argue each reference singularly contending the von Bonin reference indeed teaches plasticizers but like that claimed; applicants further argue the reference teaches glass fibers but not like that claimed; applicants argue that the cited references' material would require shorter cure time than for the claimed material. Applicants finally argue that any modification of the primary reference to arrive at the

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claimed invention would "destroy" the purpose and intent of the primary reference.

Applicant argue the Magni reference fails to suggest/teach using specific plasticizer and glass fibers. Applicants finally argue the Magni reference also fails to teach the instant claimed invention' cure time. The examiner responds by first reminding applicants that the office is in no position to experimentally determine whether or not , in a article such as that at issue, the subject matter known , i.e., cure time, is the same as that known in the prior art. Accordingly, in such instances, this shifts the burden to applicants who have the resources to make a clear distinction and to better experimentally define and identify the differences between the obvious combined teachings of the references and the claimed invention. Additionally, the references are not cited for their respective lack of related teachings. The references are cited for teachings expressly highlighted by the examiner. Thus , the secondary reference to Magni is cited for reasons as articulated in the previous office action. Regarding the fact the primary reference teaches plasticizers and glass fibers, but like those claimed. To this the examiner submits such general material/teachings of the reference's disclosure do not expressly exclude those specifically claimed in the instant application. Accordingly and in light of such submission , it is submit such types plasticizer, as claimed , would have been obvious to the skilled artisan, in the absence of unexpected results. Likewise, the claimed type glass fibers would have been obvious for reasons articulated above.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Applicants who wish to send a facsimile (draft copies) for the examiner's immediate review can do so by using the Examiner's personal fax number at 571-273-1520. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 ( November 15, 1989). **NOTE: All facsimiles sent to the examiner's personal fax number should be in draft-forms and will be treated as informal.**

**Same facsimiles will not be entered** in the related applications unless otherwise agreed and noted by the examiner.

**The fax number for all other fascimile is 571-273-8300.**

Information about **the status of an application** may be obtained from the Patent Information Retrieval system (**Private PAIR**).

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Status inquires for **published applications** may be retrieved from either **Private PAIR** or **Public PAIR**. Questions about the PAIR system should be directed to the Electronic Business Center at **866-217-9197**.

Any questions concerning the instant communication should be directed to Examiner Dixon, at 571-272-1520, Mondays, Wednesdays and Thursdays, between 12 noon and 8 PM, eastern time .

A handwritten signature in black ink, appearing to read 'Merrick Dixon', with a long horizontal flourish extending to the right.

Merrick Dixon

Primary Examiner

Group 1700